in rebuttal. It does not read well and I am not impressed by it. And so far as his findings go to show that the vehicle was used as a stage carriage without a licence I agree with them. But the Magistrate has not of course, the charge being framed as it was, considered whether the appellant was the person responsible for the user on the days in question, i.e., whether he caused the user. Upon the evidence I do not think he ought to have been convicted of "causing the vehicle to be used" as such evidence does not shew that he was responsible for the user. I therefore quash the convictions under section 80.

It is, however, submitted by Mr. Grattan-Bellew that the appellant in this case could have been convicted of aiding and abetting his father—employer—in the offence of causing the vehicle to be used as a stage carriage and that such conviction should be entered by this Court. But I do not agree with this submission for it appears to me to be, at the least, impracticable. Abetment by intentional aid takes place when the doing of the thing aided is an offence. Under this section the causing of the thing to be done and not the doing of the thing is the offence; and it is difficult to understand how, or to visualize circumstances in which, one person can intentionally aid another in causing a thing to be done without becoming a causator of the thing done and consequently being liable as a principal.

As to the convictions under section 12 (3), I have already held in *Low Ah Seng v. Public Prosecutor*[1], that only a licensee can be convicted under this section. These three convictions are quashed.

But the question of abetment properly arises for here it is the using of the vehicle which is made an offence and whether a conviction for abetment should be substituted depends upon the wording of the section and upon the evidence. It appears that the appellant has driven the car on many occasions on which by section 12 (5) the burden of proof in the circumstances of the case was upon the principal offender to show that the purposes for which the vehicle had been used did not call for a higher licence fee. But while the presumptions under 12 (5) can be used to show that the principle offender has committed the offence and that therefore the offence has been committed I do not think they can be used to establish that the abettor intentionally aided the principal. In some cases the paid driver must be taken to know that the offence of "using" is being committed. In *Morris v. Tolman*[2] cited in *Low Ah Seng's* case the vehicle was licensed as a van and used by the paid driver for private purposes, viz., to carry his friends and without his master's knowledge and he was clearly in fact an abettor. But as the Magistrate in that case found that the principal had not committed the offence, it was held on appeal that as by reason of the wording of section 12 (3) the offence had not been committed at all there could be no conviction for abetment. In other words there must be a finding that the principal has committed the offence. Such a finding is absent here and I cannot, therefore, substitute a conviction for abetment of the offence under section 12 (3).

At the trial it was assumed that, as there were three convictions for "using" under section 80 (6), convictions under section 51 (1) followed automatically. But these latter convictions must now be considered independently. In the circumstances of this case I do not think a charge under section 51 (1) can lie against a mere hired driver. The expression "to use a motor vehicle" in that section means to use it in the sense of having control over its use. In this case the evidence shows that it is the owner of the vehicle who is responsible, who is the user. These three convictions are accordingly quashed.

Appeal allowed.

All convictions quashed.

SHER SINGH vs. SHANKAR SINGH and ANOTHER; MOHAN SINGH (Transferee-Appellant).

[Appellate Civil Juris. (Cussen, J.) April 7, 1941]

Civil Procedure Code (Cap. 7) Section 258 — Transfer of decree by assignment — Unnecessary for transferee wishing to apply for execution first to be "placed on the record as transferee."

The Appellant, claiming to be the transferee by assignment in writing of the Decree in a suit, applied under section 258 of the Civil Procedure Code for execution of the Decree. The Registrar ruled that he should first get himself put on the record as transferee by separate application made by Summons in Chambers, and that he could then apply for execution under Section 258.

Held, that no provision of the Civil Procedure Code existed which required the transferee of a decree to apply to be "placed on the record as transferee." Such a transferee (having, if necessary, complied with the provisions of paragraph (a) of the Proviso to Section 258 of the Civil Procedure Code) has merely to file his application for execution of the decree setting out, either

in the application or in an affidavit filed in support thereof, that he is such transferee.

Case referred to:—

Palaniappa Chettiar v. Subramania Chettiar 48 Madras 553.

APPEAL FROM REGISTRAR.

The parties appeared in person.

Cussen, J.—This is an appeal against the decision of the learned Registrar in Civil Suit No. 93/38.

The Appellant, claiming to be the transferee by assignment in writing of the Decree in that Suit, applied under Section 258 of the Civil Procedure Code for execution of the Decree.

The Registrar ruled that he should first get himself put on the record as transferee by a separate application made by Summons in Chambers, and that he could then apply for execution under Section 258.

The learned Registrar states in his "Grounds of Decision" that this has, in his experience, been the practice in the Supreme Court.

But if it has been, it is clear that there is no provision of law requiring or authorising such a proceeding as "getting placed on the Record as transferee."

Section 258 of the Civil Procedure Code reads as follows:—

"258. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree, is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same condition as if the application were made by such decree-holder.

Provided as follows—

(a) Where the decree, or such interest as aforesaid, has been transferred by assignment, notice in writing of such application shall be given to the transferor and to the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution: provided that the Court may at its discretion dispense with service of such notice on the transferor;

(b) Where a decree for money against two or more persons has been transferred to one of them, it shall not be executed against the other or others."

Section 258 is the same as 0.21 R. 16 of the Indian Code of Civil Procedure.

In *Chitaley and Rao's* commentary on the Indian Code, Volume II, page 1742, paragraph 19, occurs the following passage on R. 16:—

"19. Application for substitution by transferee:—A transferee from a decree-holder can only apply under this rule to 'execute' the decree; an application merely for recognising him as transferee is legally incompetent and must be rejected. It is not also necessary for the validity of the proceedings that the substitution of the name of the transferee is actually made. All that is necessary is that the transferee should merely file his application for execution of the decree setting out either in it or in an affidavit filed in support thereof that he is such a transferee; thereupon the Court orders the application for execution to proceed or rejects it."

The note to this cites a number of cases as authority.

I will refer only to a passage in the Judgment of Srinivasa Ayyangar, J. in the Appeal case of *Palaniappa Chettiar vs. Subramania Chettiar*[1]

"The petitioner applied in the Original Side not only for execution of the Decree under Order XXI, R. 16, but also by an independent Judge's Summons for bringing his name on the Record as a transferee decree-holder. There is no provision in the Procedure Code for any such application. I am not at all sure whether what is called 'bringing on the record the transferee decree-holder' is not really a survival from times previous to the Procedure Code.

"The scheme of the Code is that the transferee by assignment in writing or by operation of law merely files his application for execution of the decree setting out either in it or in an affidavit he has filed in support thereof that he is the transferee either by operation of law or by any particular instrument in writing....."

With this construction I agree.

And indeed it seems to me that to make such a transferee applying for execution do as the learned Registrar required is to have two applications where one only is necessary, to take two steps to do what Section 258 provides clearly shall be done in one.

The procedure under Section 258 provides for notice in writing of the application to be given to the transferor and to the judgment-debtor, thereby ensuring that the validity of the transferee's position as such will, if there is any ground for challenging it, be examined and decided.

This appeal is therefore allowed. The order of the learned Registrar is set aside and it is directed that the Appellant's application for execution be dealt with as provided in Section 258 of the Civil Procedure Code.

Appeal allowed.